(1)

Supreme Court, U.S.
FILED

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Docket No. _____

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 2004

DURAND DICKERSON
PETITIONER

V.

G. RONALD BATES JR., CHARLENE BROWN, PAUL LEAVITT, DEBORAH LEAVITT, and CROW, CLOTHIER & BATES, a KANSAS CORPORATION
RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

DURAND DICKERSON
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QUESTIONS PRESENTED

1. Did the Tenth Circuit's decision that affirmed the United States's District Court, District of Kansas decision, that it lacked subject matter jurisdiction under the **Rooker-Feldman Doctrine** so far depart from the usual course of judicial proceedings?

2. Did the Tenth Circuit's decision that affirmed the United States's District Court, District of Kansas decision that it lacked subject matter jurisdiction under the **Rooker-Feldman Doctrine** and **inextricably intertwined** conflict with the decision of *Pennzoil Company v. Texaco, Inc.* 481 US 1 (1987) (Blackmon J. concurring)?

3. Is the decision of the District Court, District of Kansas, affirmed by the Tenth Circuit Court of Appeals judicially contrary to the holding in *Pennzoil*?

4. Is the Tenth Circuit jurisprudence contrary to this Court's decision on **inextricably intertwined**?

RULE 14.1(b) STATEMENT
LIST OF PARTIES

PETITIONER
DURAND DICKERSON

RESPONDENTS
G. RONALD BATES, JR.
PAUL LEAVITT
DEBORAH LEAVITT
CHARLENE BROWN
MICHAEL CROW
MARTHA BURNETT CROW
LOUIS CLOTHIER

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BRIEF OF PETITIONER DURAND DICKERSON

OPINIONS BELOW

The Tenth Circuit Court of Appeals decisions (Appendix-A) affirmed the District Court of Kansas decision for dismissal of lack of subject matter jurisdiction under the **Rooker-Feldman Doctrine**.

The District Court's Memorandum and Order (Appendix-B) granting the defendants Motion to Dismiss under the **Rooker-Feldman Doctrine** as inextricably intertwined with petitioner's landlord-tenant dispute.

STATEMENT OF BASIS FOR JURISDICTION

The Tenth Circuit Court of Appeals decision (Appendix-A) was filed on July 7, 2004. Therefore this Court has jurisdiction pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES AND REGULATIONS

The Fifth Amendment of the United States Constitution (Appendix-C) in pertinent part says "... nor be deprived of ..... or property, without due process of law."

The Fourteenth Amendment of the United States Constitution (Appendix D) in pertinent part Section-1 says "..... nor shall any state deprive any person of ..... property without due process of law.....".

STATEMENT OF THE CASE

Petitioner filed a complaint in the United States District Court of the District of Kansas under R.I.C.O. 18 U.S.C. 1961 *et seq,* 18 U.S.C. 2, 371, 1341, 1342, 1343, 1344, and 1346 with jurisdiction pursuant to 28 U.S.C. 1331 and venue pursuant to 28 U.S.C. 1391.

On July 23, 2003 petitioner filed his first amended complaint (Appendix-F).

On August 22, 2003 respondents G. Ronald Bates Jr., Deborah Leavitt, Paul Leavitt and Crow, Clothier & Bates filed a Motion to Dismiss (Appendix-G) raising **Rooker-Feldman Doctrine** and inextricably intertwined, (Appendix-G pages 11 and 12).

On August 26, 2003 respondent Charlene Brown filed a Motion to Dismiss alleging **Rooker-Feldman Doctrine** and inextricably intertwined (Appendix-H pages 7, 8, and 9).

On September 12, 2003 petitioner filed his Response to G. Ronald Bates Jr., Deborah Leavitt, Paul Leavitt, and Crow, Clothier, and Bates Motion to Dismiss (Appendix-I) wherein he argued that the **Rooker-Feldman Doctrine** does not apply, (Appendix-I pages 6,7,8, & 9).

On September 17, 2003 petitioner filed his response to Charlene Brown's Motion to Dismiss (Appendix-J) wherein he argued the **Rooker-Feldman Doctrine** (Appendix-J pages 4,5,6,7, and 8).

On October 22, 2003 the District Court of Kansas issued it's Memorandum and Order dismissing all the defendants for lack of subject matter jurisdiction under the **Rooker-Feldman Doctrine** (Appendix-B) and on

the same date issued it's Judgment (Appendix-K).

On November 20, 2003 petitioner filed his Notice of Appeal (Appendix-L).

On January 10, 2004 petitioner filed his brief in the Tenth Circuit Court of Appeals (Appendix-M) wherein he argued the **Rooker-Feldman Doctrine** (Appendix-M pages 5, 6, 7, and 8).

ARGUMENT

This Court's decision in *Pennsoil*[1] states "..... despite the doctrine of *Rooker v. Fidelity Trust Co.* 263 US 413 (1923), and *District of Columbia Court of Appeals v. Feldman* 460 US 462 (1983), there was **no jurisdictional bar** to the Court's decision in the case, where the Court in resolving the New York company's challenge to the constitutionality of the Texas stay and lien provisions, did not need to decide any issue (a) **actually litigated in the Texas Courts** or (b) **inextricably intertwined with the issues so litigated."** (Emphasis added) stands in stark contrast to the Tenth Circuit Court of Appeals decision which states "..... In making this determination the District Court followed our well-established approach by asking "whether the state court judgment caused, actually and proximately, the injury for which [Mr. Dickerson] seeks redress" citing *City of McAlester*[2] and is judicially contrary to *Pennzoil.*

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[1]*Pennzoil Co. v. Texaco, Inc.* 481 US 1 (1987)

[2]*Pittsburg County Rural Water District No 7 v. City of McAlester* 358 F3d 694, 707 (10th Cir. 2003)

In Blackmon J. concurring opinion in the judgment in *Pennzoil* stated "..... (1) a creditor's invocation of a states post-judgement collection procedures constituted action.... (3) collateral review **was not barred** by the principles announced in *District of Columbia Court of Appeals v. Feldman* and *Rooker v. Fidelity Trust Co*," (emphasis added) in so making this decision allows for petitioner to challenge the illegal collection process by the defendants (Appendix-F par. 102).

Petitioner has not asked in his R.I.C.O. action for the federal court to review a state judgment or review a matter decided by a state court. The fact is that the state court action was no longer even pending in this case.

Therefore, both the Supreme Court's jurisprudence and the factual context of this case compels a narrow reading of the "inextricably intertwined" test.

"Inextricably intertwined" jurisprudence is "{a} federal claim in inextricably intertwined with the state court judgment it the federal claim succeeds only to the extent that the state court **wrongly** decided the issues before it. Where federal relief can only be predicated upon a conviction that the **state court was wrong** (emphasis added), it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal to the state-court judgment" *Pennzoil @ 25.*

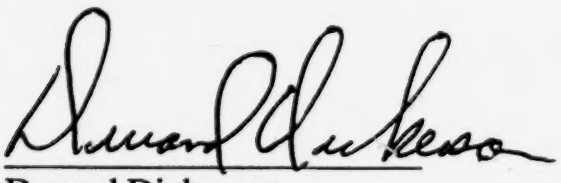
Post judgment procedural garnishment of petitioner's funds posted with the court, were fraught with fraud and violated petitioner's constitutional rights of due process, and any decision by the federal District Court in this issue under R.I.C.O. would not require a finging that the state court judgment was erroneous, regardless of

whether the case was on appeal to the Kansas Court of Appeals.

CONCLUSION

The District Court was not asked to give any equitable relief that would interfere with the related state proceedings, in fact the defendants in live testimony (Appendix-F par. 133) admit to the alleged offenses and that it took place post judgment. For these reasons this writ should issue with instructions based upon this Court's decision in *Pennzoil.*

Respectfully submitted



Durand Dickerson